by probate so that no cause of action ever existed against the testator. Even if by a fictitious relation of time, such as a disseisee may invoke in bringing suits after re-entry, the publication be carried back to his lifetime, the objections of abatement still apply. To support the action, therefore, necessitates the conception of the deceased's estate as a legal entity, itself capable of committing a tort. Were such a conception justifiable the analogy of a corporation's responsibility for libel would permit the estate to be held. *Whitfield* v. *South Eastern Ry. Co.*, E., B., & E. 113. In the Roman law, it is true, the deceased's estate was considered a juristic person, though perhaps only as regards rights of property. WINDSCHIED, PAND., § 531. But such personification is completely foreign to the common law theory which deals with the estate through administrators and executors, and not as an artificial person. Unfortunate as the result may be, we are driven to the conclusion that the common law is powerless to recompense one damaged by testamentary libel. Its only weapon against this ingenious and infamous method of doing injury rests in the probate court's power to strike out the libellous matter, a power which courts seem reluctant to exercise. See *In the Goods of Honywood*, L. R. 2 P. & D. 251.

PERFORMANCE IN IGNORANCE OF REWARD AS ACCEPTANCE OF OFFER. — The question as to whether or not the performance of the conditions of an offer in ignorance of that offer creates a binding contract is answered in contradictory ways in two distinct lines of decisions — one holding that the contract is completed the moment the claimant performs the prescribed services, even though he act without knowledge and consequently without any intention of acceptance, *Eagle* v. *Smith*, 4 Houst. (Del.) 293; *Dawkins* v. *Sappington*, 26 Ind. 199; the other holding that without knowledge of the offer there can be no acceptance nor contract, as the essential element of mutual assent is lacking. *Howland* v. *Lounds*, 51 N. Y. 604; *Chicago & A. R. R. Co.* v. *Sebring*, 16 Ill. App. 181. In the first class of cases the courts base their decisions on grounds of morality and public policy, and acknowledge the anomaly of such contracts, while in the second class the decisions as indicated are based wholly on the lack of mutual assent.

One of the grounds of decision in a late Illinois case involves a consideration of this point, the court holding that a claimant cannot recover, when he has given the required information either before the reward therefor is offered, or at a time when he is ignorant that any reward has been offered. *Williams* v. *West Chicago St. Ry. Co.*, 61 N. E. Rep. 456. The court argues that the right to recover a reward arises out of the contractual relation between offeror and claimant, implied by law, "the reason of the rule being that the services of the claimant are rendered in consequence of the offered reward, from which an implied promise is raised on the part of the person offering the reward to pay him the amount thereof;" and that no such promise can be implied unless the claimant knew at the time of performance that the reward had been offered. It would seem that the decision in *Fitch* v. *Snedaker*, 38 N. Y. 248, relied upon in so many other decisions, and chiefly cited in the principal case does not involve the precise point in question. In *Fitch* v. *Snedaker*, *supra*, the claimant had performed before the reward was

offered. Clearly such performance is not a good consideration, as one cannot very well accept an offer before it is made. In the further case of *Stamper* v. *Temple*, 6 Humph. (Tenn.) 113, also relied upon, the court's opinion on this precise point is probably *obiter*. An English case also usually cited in this connection, in deciding that the reward need not be the motive for the performance does not necessarily decide that knowledge on the part of the claimant is absolutely unessential. *Williams* v. *Carwardine*, 4 B. & Ad. 621.

If the view be adopted that knowledge is not a prerequisite, an exception must be made to the rule of contracts requiring mutual assent, an exception which it would seem is hardly justifiable. There is great force, however, in the argument that allowing a recovery in such cases is good policy, in that the public will be influenced to be more zealous in their efforts to arrest and convict criminals, restore lost property, etc., without in the least bringing any hardship on the offeror. But if public policy does demand that a recovery in such a case be allowed, it should be not on a contractual but on a *quasi*-contractual basis. Strictly then the principal case would seem to be logically sound, and in no way to depart from the theory of assumpsit. If we regard a contract as a bargain where both parties must intend that one thing be given in exchange for the other, knowledge seems essential. Furthermore an historical analysis of the action of assumpsit also strengthens the *ratio decidendi*, for when it is remembered that assumpsit is but a development from the action of deceit, where the plaintiff's cause of action rested largely on the fact that he had placed reliance on the defendant's offer or representation, knowledge on the part of the plaintiff seems all the more necessary.

THE RESPONSIBILITY OF THE EMPLOYER OF AN INDEPENDENT CONTRACTOR IN REGARD TO WORK ON A HIGHWAY. — The general rule that there is no liability for the negligence of an independent contractor is well settled. The mere employment of an independent contractor, however, does not always relieve the employer of responsibility. For example, if a municipality employs an independent contractor to make excavations in a highway, it is generally held that the municipality is liable for injury resulting to one using the highway from the negligence of the contractor in not surrounding the excavations with proper protections or in leaving the work improperly done. *Penny* v. *Wimbledon, etc., Council*, [1899] 2 Q. B. 72; *Circleville* v. *Neuding*, 41 Oh. St. 465. See *contra*, *O'Hale* v. *Sacramento*, 48 Cal. 212; *City of Erie* v. *Caulkins*, 85 Pa. St. 247. The ground of liability is that there is a positive duty imposed by law upon the municipality to see that the streets are in a reasonably safe condition, and it cannot be relieved of this duty by employing an independent contractor to carry it out. 2 DILL., MUN. COR., 4th ed., §§ 1027–1031. In other words, it is not really the independent contractor's negligence for which the municipality is held, but its own failure to fulfil a positive duty.

A somewhat similar question arises where an individual or corporation is permitted by public license to make excavations in the highway. This question was presented in a recent case in New York. The defendant railway was given authority by statute to cross a highway. Apparently the only conditions were that certain specifications should be followed,